

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

FILED

December 4, 2018

**OFFICE OF
APPELLATE COURTS**

In Re Petition for Disciplinary Action
against KARLOWBA R. ADAMS POWELL,
a Minnesota Attorney,
Registration No. 0327335.

**PETITION FOR REVOCATION
OF PROBATION AND FOR
FURTHER DISCIPLINARY
ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility (Director) files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to this Court's July 19, 2017, order in the matter.

The above-named attorney (respondent) was admitted to practice law in Minnesota on September 18, 2003. Respondent currently practices law in St. Paul, Minnesota.

INTRODUCTION

By order dated July 19, 2017, this Court suspended respondent from the practice of law for a minimum of 45 days and ordered that upon reinstatement, respondent be placed on probation for two years. A copy of the Court's order is attached as Exhibit 1.

Respondent's discipline was based upon failure to appear in court on behalf of a client in violation of Rules 1.1, 1.3, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and failure to cooperate with the Director's investigation in violation of Rule 8.1(b), MRPC, and Rule 25, RLPR.

On September 25, 2017, respondent was conditionally reinstated and placed on probation for two years.

Among the conditions of respondent's probation were the following:

- a. Respondent shall abide by the Minnesota Rules of Professional Conduct.

b. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by its due date.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

False Statements to a Tribunal, the Director, and Others, and
Unauthorized Practice of Law in the BB Matter

1. On July 19, 2017, the Court ordered respondent suspended from the practice of law for a minimum of 45 days effective as of the date of the order.

2. Respondent represented BB on a matter with two court file numbers (27-FA-16-4324 and 27-DA-FA-16-2940) in Hennepin County District Court. Family Court Referee MM presided over the matters. On August 1, 2017, respondent appeared as counsel for BB at a review hearing. Review hearings are routinely set when there is a guardian ad litem involved in the matter and the court wishes to make sure the parent is making progress with the programming. At the review hearing, the parties discussed how to move the case(s) forward and possible trial dates. Also present at the review hearing were opposing counsel (DL) and the guardian ad litem (GAL). Respondent's appearance on behalf of BB constituted the unauthorized practice of law because respondent engaged in legal practice while respondent's license to practice law was suspended as of July 19, 2017.

3. While in Referee MM's chambers prior to the hearing, the parties discussed, among other things, dates for scheduling future hearings and pre-trial conferences. A number of dates were suggested, including August 8, 11, and 21, 2017. Respondent informed Referee MM that she would be unavailable for those specific dates and unavailable to attend any hearings until September 16, 2017. When asked by Referee MM the reason respondent was unavailable for such an extended period of

time, respondent stated that she had vacations scheduled and two trials coming up.

Respondent made these statements knowing they were false.

a. The upcoming vacations that respondent claimed made her unavailable for any appearance until after September 16, 2017, included only a four-day trip to Texas in August (the 9th through 13th) and two trips scheduled for *after* September 16, 2017. Therefore, the only period prior to September 16, 2017, that respondent was unavailable for a hearing due to a vacation was August 9, 2017, through August 13, 2017.

b. The upcoming trials that respondent stated made her unavailable for any appearance until after September 16, 2017, were trials scheduled for August 21 and September 18, 2017. Respondent's suspension from the practice of law spanned the period of July 19, 2017, through September 2, 2017, at a minimum. Therefore, respondent was unable to engage in the practice of law or be available to prepare for or attend any trials until after her license was reinstated. Contrary to respondent's representation, those trials could not be the reason she was unable to attend any hearings until September 16, 2017, in the BB matter.

c. At the time of that statement on August 1, 2017, respondent had received the Court's July 19, 2017, order regarding her suspension from the practice of law. Respondent was unable to make any appearances until after her reinstatement in September 2017 because of her suspension, not because of her vacations or trials. Respondent failed to disclose to Referee MM, DL or the GAL at the hearing that respondent could not make any appearances prior to September 16, 2017, because respondent was suspended from the practice of law as of July 19, 2017, for at least 45 days. Indeed, and as addressed in further detail below, pursuant to the Court's suspension order and Rule 26, RLPR, respondent was obligated to notify Referee MM and DL of her suspension by July 31, 2017.

4. Because the parties were unaware of respondent's suspension, a telephone hearing was nonetheless scheduled for August 8, 2017.

5. When agreeing to schedule the August 8, 2017, telephone hearing, respondent assured Referee MM, DL and the GAL that she would find an attorney to attend in her place. Respondent also stated that she was unable to attend because she would be on vacation. Respondent made this statement knowing it was false. Respondent's vacation that purportedly prevented her from attending the August 8, 2017, telephone hearing did not begin until August 9, 2017. Respondent was unable to attend the hearing because of her suspension, not because of her vacation.

6. Respondent was unable to find an attorney to attend the August 8, 2017, telephone hearing in her place. On August 7, 2017, respondent sent an email to Referee MM and DL asking to continue that August 8, 2017, telephone conference. Respondent stated that she was suspended from practicing law and unable to find someone to attend the telephone hearing in her place. This was the first time respondent mentioned to Referee MM and DL that she was suspended.

7. In addition to informing the parties (the GAL was subsequently copied in on the email chain) of her suspension and inability to attend the August 8, 2017, telephone conference, respondent addressed, on behalf of her client, other matters, including her client's position regarding the GAL's proposal. In the email, respondent stated:

Please be advised [BB] doesn't not agree with the GAL's proposal and wants her to complete a neuro-psych exam as she was previously ordered before therapy would begin. [X] has been having nightmares since he learned of the potential therapy His therapist has attempted to contact the GAL to no avail.

8. Respondent's discussion of her client's case with Referee MM, DL and the GAL in the August 7, 2017, email constituted the unauthorized practice of law because respondent engaged in legal practice while respondent's license to practice law was suspended.

9. Because respondent was unable to attend the August 8, 2017, telephone hearing due to her suspension, and because respondent was unable to find an attorney to appear on behalf of BB in her place, the August 8, 2017, telephone hearing was continued (despite strong objections from DL to a long continuance) until August 28, 2017, thus delaying the case.

10. In response to Referee MM's complaint regarding respondent's conduct, respondent stated to the Director that the reason respondent did not mention the suspension was because at the time of the August 1, 2017, hearing she did not believe her suspension was for "public consumption and something that she would be in the position to disclose." This statement is knowingly false. The Court's suspension order ordered respondent to "comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals)." Rule 26(b), RLPR, provides that a suspended lawyer "shall notify each client, opposing counsel (or opposing party acting pro se) and the tribunal involved in pending litigation . . . as of the date of the . . . order imposing discipline"

11. Rule 26(c), RLPR, provides that, "Notices required by this Rule shall be sent by certified mail, return receipt requested, within ten (10) days of the Court's order." Therefore, respondent was required to provide notice to Referee MM and DL of her suspension by July 31, 2017 (ten days from the Court's July 19, 2017, order was July 29, 2017, which fell on a Saturday and, therefore, the Director could consider July 31, 2017, as the date by which respondent had to mail these notices). Respondent was aware that she had an obligation to notify Referee MM and DL of respondent's suspension, and respondent's Rule 26 notices to DL and the court were dated July 28, 2017.¹ Therefore, respondent knew at the August 1, 2017, hearing that her suspension

¹ The Director notes that in her affidavit for reinstatement, respondent avers that she sent notices pursuant to Rule 26 and the Court's suspension order on August 1, 2017, which is one day after the 10-day deadline required under Rule 26(c), RLPR. Further, DL did not get her notice until after August 7, 2017.

was public and that Referee MM and DL were entitled to know about respondent's suspension.

12. Respondent's lack of candor and failure to promptly notify the court and the parties of her suspension earlier in the proceedings burdened the court and the judicial process by causing unnecessary delays and waste of court time and resources.

13. During the course of the Director's investigation, the Director asked respondent whether the August 8, 2017, telephone hearing had to be continued. Respondent stated in a written response, and under oath at a deposition, that she was able to find an attorney to appear in her place and that the August 8, 2017, telephone conference occurred. Respondent made these statements knowing they were false. Respondent did not find an attorney to appear in her place on August 8, 2017, and the August 8, 2017, telephone hearing was cancelled and continued until August 28, 2017.

14. Respondent's conduct in appearing at the August 1, 2017, review hearing and representing her client in a series of emails dated August 7, 2017, while not licensed to practice law violated the Court's July 19, 2017, suspension order and Rules 3.4(c) and 5.5(a), MRPC.

15. Respondent's conduct in falsely telling Referee MM, DL and the GAL that she was unable to schedule any hearings until after September 16, 2017, due to two trials and upcoming vacations violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

16. Respondent's conduct in falsely telling Referee MM, DL and the GAL that she was unable to attend a telephone conference on August 8, 2017, due to a vacation violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

17. Respondent's conduct in falsely telling the Director that the August 8, 2017, telephone hearing occurred and was not continued and that she found another attorney to appear for BB violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

18. Respondent's conduct in falsely telling the Director that respondent did not mention the suspension because she did not know her suspension was for "public

consumption and something that she would be in the position to disclose" violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

SECOND COUNT

Additional Unauthorized Practice of Law and Failure to Provide Proper Receipt for Cash Payments in the JS Matter

19. In June 2017, JS hired respondent to represent her in three separate criminal matters. Respondent's fee for the representation was \$3,000 and JS's mother paid respondent \$1,500 in cash up front.

20. Respondent provided JS's mother with a receipt for the cash payment; however, that receipt was not countersigned by the payor as required by Rule 1.15(h), MRPC, as interpreted by Appendix 1, Section II(2), thereto.

21. On July 19, 2017, the Court ordered respondent suspended from the practice of law for a minimum of 45 days, effective as of the date of the order.

22. Despite her suspension from the practice of law, respondent continued her legal representation of JS. On July 24, 26, and 31, 2017, respondent consulted with JS and others about JS's case and provided legal advice and consultation for which she invoiced JS for the legal work.

23. On August 1, 2017, respondent contacted a Dakota County district court clerk and the prosecutor on the case regarding a possible continuance of the case.

24. Respondent's conduct of accepting a cash payment of \$1,500 and failing to provide her client a receipt that is countersigned by the payor violated Rule 1.15(h), MRPC, as interpreted by Appendix 1, Section II(2), thereto.

25. Respondent's conduct of continuing to represent JS while suspended from the practice of law violated the Court's July 19, 2017, suspension order and Rules 3.4(a) and 5.5(a), MRPC.

THIRD COUNT

Failure to Safeguard Client Funds and Additional False Statements to the Director

26. On September 25, 2017, respondent's license to practice law was conditionally reinstated. As part of the conditions of respondent's reinstatement, she was placed on supervised probation for two years. The Court's order requires that respondent "shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by its due date." Further, the Court's order requires that respondent "abide by the Minnesota Rules of Professional Conduct."

27. On January 17, 2018, respondent met with members of the probation department of the Director's Office because respondent did not yet have a probation supervisor assigned.

28. During the meeting, the Director's Office requested that respondent provide several randomly selected client files for review, which included respondent's client files for BB² and RW. After reviewing those files, the Director's Office discovered that respondent's flat fee agreements in those cases did not comply with Rule 1.5(b), MRPC.

29. In the BB matter, respondent and BB entered into a flat fee retainer agreement on August 18, 2016. The flat fee agreement provided that respondent would represent BB in his family law case for a flat fee of \$2,500. The flat fee agreement did not disclose that the fee would not be held in a trust account until earned; that the client had the right to terminate the client-lawyer relationship; and that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided, as required by Rule 1.5(b)(1), MRPC. Further, the fee agreement states, "this is a flat fee and non-refundable." Under Rule 1.5(b)(3), MRPC, such a provision is impermissible. Because respondent's flat fee did not comply with Rule 1.5(b)(1), MRPC,

² BB is the same client mentioned in the First Count of this petition.

respondent was obligated to place any unearned fees in trust pursuant to Rule 1.15(a) and (c)(5), MRPC.

30. BB paid respondent for the family law representation as follows: \$255 on July 26, 2016; \$1,000 on July 29, 2016; and \$1,250 on August 15, 2016. None of these payments were placed in respondent's trust account. By August 15, 2016, BB had paid respondent the full \$2,500 flat fee. Respondent did not complete the agreed-upon services until December 11, 2017, and did not fully earn the \$2,500 flat fee until that date. Therefore, all or at least a portion of the \$2,500 BB paid to respondent should have been placed in trust until December 11, 2017, when it was fully earned.

31. In the RW matter, respondent and RW entered into a flat fee agreement on April 25, 2017. The flat fee agreement provided that respondent would represent RW in his family law case for a flat fee of \$2,500. The flat fee agreement did not disclose that the fee would not be held in a trust account until earned; that the client had the right to terminate the client-lawyer relationship; and that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided, as required by Rule 1.5(b)(1), MRPC. Further, the fee agreement states, "this is a flat fee and non-refundable." Under Rule 1.5(b)(3), MRPC, such a provision is impermissible. Because respondent's flat fee does not comply with Rule 1.5(b)(1), MRPC, respondent must place any unearned fees in trust pursuant to Rule 1.15(a) and (c)(5), MRPC.

32. RW paid respondent for the family law representation as follows: \$600 on February 22, 2017; \$1,150 on March 29, 2017; \$500 on May 15, 2017; and \$250 on June 15, 2017. None of these payments were placed in respondent's trust account. By June 15, 2017, RW had paid respondent the full \$2,500 flat fee. Respondent did not complete the agreed-upon services until April 20, 2018, and respondent did not fully earn the \$2,500 until that date. Therefore, all or at least a portion of the \$2,500 RW paid to respondent should have been placed in trust until April 20, 2018, when it was fully earned.

33. When the Director's Office asked respondent if she placed any unearned portion of fees in the BB and RW matters into a trust account, respondent indicated that

she had placed such fees into her trust account and agreed to provide proof of deposits. Respondent made this statement knowing it was false. Respondent is the person responsible for making the deposits relating to these fees, and should know where those deposits were made.

34. On January 23, and again on February 21 and 23, 2018, the Director's Office followed up with respondent about the promised proof of deposits. Respondent delayed in providing the requested information until early March 2018. At that time, respondent admitted that the fees at issue were not deposited into her trust account. Respondent disclosed that those fees were, in fact, placed in respondent's personal account.

35. When the Director's Office questioned respondent about her representations that BB's and RW's funds were placed into her trust account, respondent claimed that the handwriting on the deposit slips directing that both BB's and RW's funds be deposited into the personal account was not her own handwriting (either partially or entirely). Respondent further claimed that she contacted Wells Fargo to inquire about this issue and a named bank employee told respondent that placement of the funds in respondent's personal account, rather than into her trust account, was a bank teller's error. Respondent made this statement knowing it was false.

36. The Director's Office requested that respondent provide documentation from the bank verifying the error. Respondent stated that the named bank employee did not assist respondent at the time of the deposits, and he did not provide respondent with anything in writing to verify the deposit of BB's and RW's funds into respondent's personal account was a bank error. Respondent provided no further explanation of the bank error.

37. Contrary to respondent's representations, the named bank employee at Wells Fargo stated that deposits are made at the customer's direction. While a teller may assist a customer in completing a deposit slip, the specific account into which a deposit should be made is dictated by the customer. Therefore, the responsibility to

ensure funds are deposited into the proper account falls to the customer, who can verify the deposit by reviewing the deposit receipt. Respondent made the deposits in question in 2016 and 2017, and inquired from the named bank employee about these deposits in 2018. The named bank employee stated that it would be nearly impossible to determine a bank error on a deposit at *any* time, much less a deposit made a year or two earlier. Because the named bank employee could never make such a determination, the named bank employee is certain he did not state to respondent that the deposit made into the "wrong" account was a "bank error."

38. Respondent's conduct in failing to promptly respond to requests from the Director's Office during the course of respondent's supervised probation violated Rule 8.1(a), MRPC, and the July 19, 2017, and September 25, 2017, orders.

39. Respondent's conduct in falsely claiming that fees were deposited into a trust account when they were deposited into a personal account violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

40. Respondent's conduct in falsely claiming that the named bank employee told respondent deposits made into her personal account rather than into her trust account were due to bank teller error violated Rules 8.1(a) and 8.4(c) and (d), MRPC.

41. Respondent's conduct of failing to deposit unearned fees into a trust account, absent a compliant flat fee agreement, violated Rule 1.15(c)(5), MRPC.

ADDITIONAL DISCIPLINARY HISTORY

In considering the nature of discipline to be imposed, pursuant to Rule 19(b)(4), RLPR, the Court may consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

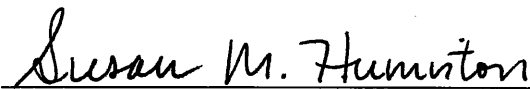
A. On May 16, 2016, respondent received an admonition for her conduct in failing to diligently pursue a client's representation and failing to keep the client advised of the status of the representation in violation of Rules 1.3 and 1.4, MRPC.

B. On April 10, 2007, respondent received an admonition for failing to act with reasonable diligence and promptness and failing to explain a matter to the extent

reasonably necessary to permit the client to make informed decisions regarding the representation in violation of Rules 1.3 and 1.4(b), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

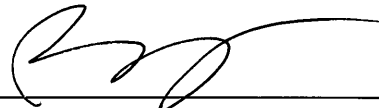
Dated: October 31, 2018.



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